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Attorneys for Plaintiff, Well Made Mf'g Corporation

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

WELL-MADE TOY M'FG. CORPORATION: a corporation of the State of New York:

Plaintiff, : Civil Action No.:

v.

FLOWERS, INC.. (d/b/a Burton & Burton) a corporation of Georgia

COMPLAINT FOR COPYRIGHT INFRINGEMENT

Plaintiff for its Complaint against the Defendants respectfully alleges as follows:

THE PARTIES

- 1. The plaintiff, Well Made Toys M'fg Corporation (hereinafter "Well Made"), is a corporation of the State of New York having its principal place of business at 52-07 Flushing Avenue, 2nd Floor, Maspeth, NY 11378.
- 2. Upon information and belief, the defendant Flowers, Inc. (d/b/a Burton & Burton) is a corporation of the state of Georgia having its principal place of business at 325 Cleveland Road, Bogart, GA 30622-1766
 - 3. Plaintiff Well Made is informed and believes and on that basis alleges, that

Defendants Flowers, Inc. have transacted business in the State of New York by offering for sale and selling within this Judicial District by direct sales products infringing the rights of Well Made asserted herein.

JURISDICTION AND VENUE

- 4. The claims herein arise under the Copyright Laws of the United States, 17 U.S.C. § 101 *et seq.*, and jurisdiction is conferred by virtue of 28 U.S.C. §§ 1331(a) and 1338(a). The claims herein also arise under the international copyright laws including the Universal Copyright Convention and The Berne Convention, and the copyright laws of Canada, including the Canadian Copyright Act (R.S.C. 5.)
 - 5. Venue is founded upon 28 U.S.C. § 1391(b) and (c).

COUNT I: VIOLATION OF FEDERAL AND INTERNATIONAL COPYRIGHT LAW

- 6. Well Made hereby charges Flowers, Inc. with copyright infringement in violation of The Copyright Act of 1976, the applicable international conventions including the Universal Copyright Convention and The Berne Convention, and the laws of Canada, including the Canadian Copyright Act (R.S.C., c. C-42).
- 7. Well Made is involved in the design and marketing of toys, including sculptural dolls. The designs created by or for Well Made are copyrighted under the laws of the United States, Canada, and under international law including the various copyright conventions and treaties the United States is a party to, as the Universal Copyright Convention and The Berne Convention.
- 8. The copyrighted designs of Well Made include the *Debbie Dancer* doll, designed and created by Well Made. The *Debbie Dancer* design is registered in the United States Copyright Office, United States Copyright Registration No. Vau 1-226-922, for facial artwork and the soft body sculpture.

- 9. Attached hereto as Exhibit A is a true and correct copy of the Copyright Registration Certificate No. Vau 1-226-922.
- 10. The copyright for the *Debbie Dancer* doll created by Well Made is in full force and effect; and Well Made has complied with all requirements in submitting the application, for copyright registration for the *Debbie Dancer* doll, Exhibit A. Well Made has complied with all requirements for the protection its copyrighted designs in the United States and internationally.
- 11. The plaintiff Well Made is informed and believes, and therefore avers, that subsequent to the introduction, by Well Made into the market of the United States, of its *Debbie Dancer* doll, the defendants Flowers, Inc. have infringed upon the copyright of Well Made in its *Debbie Dancer* doll by producing, or causing to be produced, importing into the United States as well as marketing therein sculpted dolls that have been copied directly from and are substantially similar in appearance to the copyrighted design of the *Debbie Dancer* doll of Well Made.
- 12. The defendant, Flowers, Inc., marketed within this judicial district at least two styles of its dolls, the Ballerina Doll and Graduation Doll (collectively hereinafter "the infringing dolls"), having substantially similar sculptural artwork as the doll illustrated in Exhibit A.
- 13. Attached hereto as Exhibit B is a true and correct copy of a color image of the *Debbie Dancer* doll created and marketed by Well Made, along side the comparable doll that, upon information and belief, is distributed by defendant Flowers, Inc.
- 14. Attached hereto as Exhibit C is a true and correct copy of at least some of the infringing dolls of Flowers, Inc. offered for sale, within this judicial district, on amazon.com.

- 15. The infringing dolls marketed by the defendants, upon information and belief, have been copied directly from and is substantially similar to the copyrighted *Debbie Dancer* doll marketed by plaintiff Well Made; and more particularly, the distinctive artwork of the sculptural features and facial artwork of the infringing dolls marketed by the defendant is essentially identical to the copyrighted *Debbie Dancer* doll of Well Made.
- 16. As a result of such actions, as outlined in paragraphs 6-15 above, defendant Flowers, Inc. has directly infringed Well Made's copyrights.
- 17. As a result of such actions, as outlined in paragraphs 6-15 above, defendant Flowers Inc. has directly infringed and induced the infringement of others of Well Made's copyright, including retailers in this judicial district, who purchased the infringing Flowers Inc. products, and Flowers Inc., upon information and belief, knew such retailers would be offering the infringing Flowers Inc. products for sale in this judicial district.
- 18. The plaintiff Well Made is informed and believes and, therefore avers that the aforesaid infringement and inducement thereof by the defendant of the copyrighted subject matter of Well Made was, and continues to be, with the knowledge that the sculpted designs of Well Made's products are copyrighted and that the defendant, in doing or authorizing such acts, has infringed the rights of Well Made under the copyright laws of the United States, Title 17 U.S.C. § 101 et seq.
- 19. The acts noted above of the defendant are unauthorized by Well Made or any of its agents, and such unlawful acts have enabled the defendant to trade unlawfully upon the creative efforts of the plaintiff Well Made. The defendant has, consequently, unjustly enriched themselves at the expense and to the damage and injury to the plaintiff Well Made.

- 20. Upon information and belief, unless enjoined by this court, the defendant will further impair if not destroy the value of the copyrights and the goodwill associated therewith that are owned by the plaintiff Well Made.
- 21. Upon information and belief, Well Made avers that as a result of the foregoing, Well Made risks substantial loss of revenues and has sustain irreparable damage as the result of the willful and wrongful conduct of the defendants.

COUNT II: INDUCEMENT TO INFRINGE COPYRIGHT

- 22. As a second and complete ground for relief, plaintiff Well Made hereby charges the defendant Flowers, Inc. with inducement of others to infringe valid international copyrights of plaintiff Well Made and hereby realleges the allegation of paragraphs 1 through 21 as though fully set forth herein.
- 23. By the activities noted above, the defendant Flowers, Inc. has induced others around the world to infringe the international copyrights of plaintiff Well Made set forth herein by inducing others to manufacture and/or market products having unauthorized copies of the Well Made designs and, upon information and belief, such inducement was done willfully, knowingly, and maliciously.
- As a result of the inducement by the defendant Flowers, Inc. of others including manufacturers and retailers of products bearing the artwork infringing the copyrights of plaintiff Well Made as set forth herein, such others including manufactures and retailers have profited wrongfully and to the injury of plaintiff Well Made.

WHEREFORE, Plaintiff prays:

A. That the defendants, Flowers, Inc., and their agents, servants, employees and attorneys as well as those persons in active concert or participation therewith be permanently enjoined and restrained from manufacturing, having manufactured, importing,

offering for sale, selling, advertising or promoting or distributing in the United States any products incorporating the copyrighted subject matter or distinctive elements of the sculpted dolls of Well Made; and

- B. further, that the defendants Flowers, Inc., be ordered:
- (i) to deliver up for destruction all of the merchandise in their possession or control which incorporates any of the copyrighted designs of products marketed by Well Made, as well as all means for producing, advertising or promoting such infringing merchandise;
- (ii) to make diligent efforts to recall all of the materials set forth in paragraph(B)(i) already distributed; and
- (iii) to file with this court and serve on plaintiff ten (10) days after the date of the injunction a report in writing and under oath setting forth in detail the matter or form in which the Defendants Flowers, Inc. have complied fully with the injunction;
- C. that an accounting and judgment be rendered jointly and severally against the defendants Flowers, Inc. for:
- (i) all profits received by the defendants from the sale of products infringing the copyrights asserted in this matter as provided by 17 U.S.C. § 504(b) and applicable international law;
- (ii) all damages sustained by Well Made as a result of the copyright infringement of the defendants including compensation to Well Made fully for all sales of products of Well Made that have been diverted or reduced as a result of the infringement by the defendants as provided by 17 U.S.C. § 504(b) and international law;
- (iii) in the event Well Made so elects, statutory damages in the amount of \$150,000 as authorized by 17 U.S.C. § 504(c)(2) against the defendants for each copyright infringed and for each style of product infringing such copyright;

- D. against defendants Flowers, Inc., an accounting and judgment be rendered for:
 - (i) all profits received by the customers of defendants for the induced infringement from the resale of products infringing the copyrights asserted in this matter as provided by 17 U.S.C. § 504(b)and international law;
 - (ii) all profits received by the manufacturer of defendants for the induced infringement from the manufacture of products infringing the copyrights asserted in this matter as provided by 17 U.S.C. § 504(b)and international law;
 - (iii) in the event Well Made so elects, statutory damages in the amount of \$150,000 as authorized by 17 U.S.C. § 504(c)(2) against defendant for the infringement induced for each of its customers;
- E. that Well Made have and receive its costs in this action, including an award of its reasonable attorney's fees with interest from the date of the filing of this complaint pursuant to 17 U.S.C. § 505;
- F. that Well Made receive interest on its damages awards from the date of injury;
 - G. punitive damages for the willful and wonton infringement of defendant; and
- H. that the plaintiff be granted such other and further relief as the court deems just and appropriate.

Dated: New York, New York

February 19, 2016

Respectfully submitted,

/s/ Joseph A. Dunne

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Attorneys for Plaintiff, Well Made Mf'g

Corporation

EXHIBIT A

Case 2:16-cv-01380-ADS-ARL Document 1 Filed 03/21/16 Page 10 of 33 PageID #: 10 Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Tallante

Register of Copyrights, United States of America

Registration Number

VAu 1-226-922

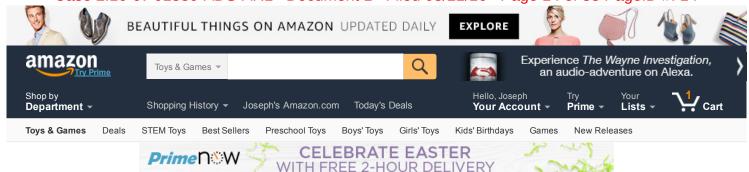
Effective Date of Registration: December 06, 2001

Title	
Title of Work:	"DEBBIE DANCER"
Nature of Claim:	FACIAL ARTWORK & SOFT BODY SCULPTURE
Completion/Publication	
Year of Completion:	2001
Author	
Author: Author Created: Work made for hire:	WELL-MADE TOY MFG. CORP. 3-Dimensional sculpture, 2-Dimensional artwork Yes
Copyright Claimant	
Copyright Claimant:	WELL-MADE TOY MFG. CORP. 184-10 EAST JAMAICA AVENUE, HOLLIS,, NEW YORK, 11423
Certification	
Name: Date:	SUSAN COOK October 12, 2001

EXHIBIT B



EXHIBIT C



Toys & Games > Dolls & Accessories > Dolls



"Jenny" 18" Ballerina Doll Adorable Doll for Ballet Dancers

by Burton & Burton

★★★★★ ▼ 21 customer reviews

Price: \$17.25 & FREE Shipping on orders over \$49.

Details

Only 4 left in stock.

Want it tomorrow, March 22 to 11215? Order within 21 hrs 37 mins and choose Same-Day Delivery at checkout. Sold by Stock Your Home and Fulfilled by Amazon. Gift-wrap available.

18"H measured head to toe.

6 new from \$17.25



Total price: \$24.23

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"Lindsey" 18" Ballerina Plush Doll Adorable Doll for Everywhere! (Reading Our Ballet Dancers ★★★★★6 \$18.04 **Prime**



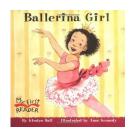
I Wear My Tutu Railroad) > Wendy Cheyette Lewison ★★★★★ 140 Paperback \$3.49 **Prime**



I'm a Ballerina! (Little Golden Book) > Sue Fliess ★★★★★ 15 Hardcover \$3.49 **Prime**



Aurora World Brunette Ballerina 14.5" Plush **★★★★** 25 \$11.95 **Prime**



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Metoo Tiramitu Stuffed Bunny Plush Rabbit Dolls Toys Floral Dress 17inch \$25.99 **Prime**

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Special Offers and Product Promotions

Your cost could be \$0.00 instead of \$17.25! Get the Amazon.com Rewards Visa card and you'll automatically get \$50.00 off instantly as a gift card. Apply now.

Product Description

Jenny plush ballerina doll with brown pony tails made of yarn. Is wearing a pink tutu skirt with silver sparkles on top of dress. Has embroidered nose and mouth. Clothes are not removable.

Product Information

Product Dimensions	17 x 10.3 x 3.2 inches
Item Weight	7.8 ounces
Shipping Weight	7.8 ounces (View shipping rates and policies)
ASIN	B0013J16SI
Manufacturer recommended age	12 months and up
Best Sellers Rank	#25,769 in Toys & Games (See Top 100 in Toys & Games) #833 in Toys & Games > Dolls & Accessories > Dolls #13,919 in Toys & Games > Preschool
Customer Reviews	reviews 4.4 out of 5 stars

Warranty & Support

Product Warranty: For warranty information about this product, please click here

Feedback

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Manhattan Toy Baby Stella Brunette Soft Nurturing First Baby Doll (new f... ★★★★ 36

\$25.21 *Prime*



Clara Marie My Ballerina Nutcracker Collection Doll

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Magic Baby Doll Toy For Children, Laughs, Talks, Feeds, Cries & much More

★★★☆ 4

\$22.95

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3/21/2016 Case 2:16-cv-01380-4473-9478 [Jenny ole | Fallering | Poll | Active | Poll | Paller | Dance | Tolk | Paller | Dance | Dance

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See questions and answers

Customer Reviews

***** ***** 21

4.4 out of 5 stars •



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Top Customer Reviews

** Disappointed.

By Abcdef on December 15, 2014

Really disappointed. This was a gift and it is not boxed, comes wrapped up in cellophane. The doll's body is a lot smaller than I thought, feels flimsy, not at all "huggable" for a little girl. It also has a gold loop on top of the head which makes me think this is more of an ornament than a doll. Also there is a fabric tag on the leg that's very prominent, it's not shown in the picture. I don't think it can be cut off. Not worth the money

Comment 7 people found this helpful. Was this review helpful to you? Yes



Report

★★★★★ Perfect!

By Familyofeight! on January 27, 2015

Verified Purchase

abuse

Such a cute doll and I LOVE that the clothes are sewed on. My daughter loves to take the clothes off of every doll and this one she can not. She loves her Ballet doll!

Comment | 4 people found this helpful. Was this review helpful to you? abuse



Report

★★★★★ precious doll for a new ballerina.

By Madeline on August 1, 2014



Ad feedback [

Most Recent Customer Reviews

🛊ជាជាជាជា One Star

Wish that it came in a biracial color Published 23 days ago by Laurie S. Jaffe

★★★★★ Five Stars

Adorable, nice size, huggable. My granddaughter loves this doll. Very well made. Very nice quality. So

Published 1 month ago by rosemary nice

*** happy ballerina!

My ballerina princess loves her ballerina doll!!! Published 2 months ago by SourthernLady2011

** Tive Stars

Beautiful 18 " rag doll. Just perfect for little hands. Published 3 months ago by pattyjay

★★★★★ Soft

Soft n cute. One child wanted a ballerina like her big sister. This is perfect.

3/21/2016 Case 2:16-cv-01380-Amargn-paper ["Jendy"old" [Findlering Poll Active ble (Dg) 201 1341 (8t Dancarge Toys & Granges Page ID #: 18

Verified Purchase

The doll is adorable. My grandad a daughter sleeps with her every nite.

Comment 4 people found this helpful. Was this review helpful to you? Yes No Report abuse

***** I really didn't expect it to be a good quality doll for the price

By Max on November 25, 2015

Verified Purchase

I bought this for a Christmas gift for m granddaughter. I really didn't expect it to be a good quality doll for the price. I thought the tutu would be stiff but wanted the doll anyway. What a surprise to get the doll and feel how huggable she is. The tutu is so soft she could sleep with this doll

Comment | 3 people found this helpful. Was this review helpful to you? Yes No Report abuse

*** * Five Stars

By Sharon on January 13, 2015

Verified Purchase

Love this little doll and so does my 3yo ballerina.

Comment One person found this helpful. Was this review helpful to you? abuse

**** Love!

By Stephanie on January 17, 2016

Verified Purchase

This little doll is adorable! Got it for my daughter's 1st birthday and she was in love! Love the material, it's like a sturdier rag doll. I bought it to leave on her cake table for her birthday party and then for her to keep the doll and take pictures with it. I thought the ballerina would be able to do a split like it's shown in the image, but the doll won't do it.

Comment | Was this review helpful to you? Yes No Report abuse

*** Five Stars

By Dangereux on December 28, 2014

Verified Purchase

Very nice and good quality items. Thank you.

Comment One person found this helpful. Was this review helpful to you? No Report abuse

★☆☆☆☆ Loved, But Falling Apart

By cedscurato on February 20, 2016

Verified Purchase

My daughter loves this ballerina, but unfortunately her hair ties totally came undone/unraveled and her hair started to fall out of the pony tails. I had to resort to using my own hair ties. The ballerina slippers are also very fuzzy now. Cute, but not very well made.

Comment | Was this review helpful to you? | Yes | No |

See all 21 customer reviews (newest first) >

Write a customer review

Published 3 months ago by Scrapper

**** Adorable

My granddaughter takes ballet, and has long brown hair. This was perfect, and she won't get in the car

Published 5 months ago by Humngbrdsng

**** She was so excited and loved the

This was a gift for our grandaughter after a dance recital. She was so excited and loved the doll. Others that saw it, commented on what a neat idea.

Published 8 months ago by Cheryl

and a nice size

Was happily surprised. Very cute and a nice size. My 3 yr old loved it.

Published 9 months ago by Carlie

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\$3.49 **Prime**

"Lindsey" 18" Ballerina Plush Doll Adorable Doll for **Our Ballet Dancers** ★★★★★ 6 \$18.04 *Prime*

Aurora World Brunette Ballerina 14.5" Plush **★★★★** 25 \$11.95 *Prime*

Melissa & Doug Alexa - 14" Ballerina Doll **★★★★☆** 74 \$29.97 **Prime**



★★★★★ 47 \$13.99 **/Prime**

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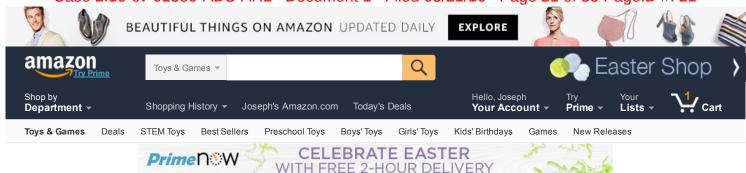
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Home & Kitchen > Home Décor > Home Décor Accents > Collectible Dolls



"Lindsey" 18" Ballerina Plush Doll Adorable Doll for Our Ballet Dancers

by Burton & Burton

★★★★★ ▼ 6 customer reviews

Price: \$18.04 & FREE Shipping on orders over \$49.

Details

Only 11 left in stock.

Want it tomorrow, March 22? Order within 2 hrs 52 mins and choose One-Day Shipping at checkout. Details Sold by Stock Your Home and Fulfilled by Amazon. Gift-wrap available.

- An adorable 18-inch ballerina rag doll with beautifully neat, long yellow yarn hair.
- Multi-layered, soft tutu (not removable). Light pink legs give the appearance that she is wearing pink tights.
- Embroidered facial features. Short elastic loop on back of head for hanging, if desired.
- Sparkly "shoes" and "leotard". Two pink scrunchies (removable) around her ponytails (ponytails sewn underneath).

Total price: \$38.78

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• Safety tested to be suitable for all ages.

8 new from \$18.00

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✓ "Jenny" 18" Ballerina Doll Adorable Doll for Ballet Dancers \$17.25

✓ This item: "Lindsey" 18" Ballerina Plush Doll Adorable Doll for Our Ballet Dancers \$18.04

✓ I Wear My Tutu Everywhere! (Reading Railroad) by Wendy Cheyette Lewison Paperback \$3.49

Customers Who Bought This Item Also Bought



"Jenny" 18" Ballerina Doll Adorable Doll for Ballet Dancers

\$17.25 **Prime**



I Wear My Tutu Everywhere! (Reading Railroad)

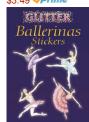
> Wendy Cheyette Lewison ★★★★★ 140 Paperback \$3.49 **Prime**



I'm a Ballerina! (Little Golden Book) > Sue Fliess

★★★★★ 15 Hardcover

\$3.49 **Prime**



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★★★★ 36

Paperback

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★★★★ 96 Paperback

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Melissa & Doug Alexa - 14" Ballerina Doll

★★★★ 74

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Sahara Ballerina Plush Rag Doll ★★★★ 1

\$16.99 *Prime*



Ballerina Pretty Pink Dress Collectible Bisque Porcelain Doll \$45.00



Joy Jewelry Tree Display Stand - Model: Elegante -Type: Tall+Large - Si... \$\frac{1}{2}\$\$\frac{1}{2}\$\$\$\$ 91

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Your cost could be \$8.04 instead of \$18.04! Get \$10.00 off instantly as a gift card upon approval for the Amazon.com Store Card.
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Product Description

An adorable 18-inch ballerina rag doll with beautifully neat, long yellow yarn hair. Multi-layered, soft tutu (not removable). Light pink legs give the appearance that she is wearing pink tights. Embroidered facial features. Short elastic loop on back of head for hanging, if desired. Sparkly "shoes" and "leotard". Two pink scrunchies (removable) around her ponytails (ponytails sewn underneath). Safety tested to be

Product Information

Product Dimensions	14.9 x 7.6 x 2 inches
Item Weight	6.4 ounces
Shipping Weight	6.4 ounces (View shipping rates and policies)
ASIN	B00701QHRW
Item model number	9715640
Manufacturer recommended age	1 month and up
Best Sellers Rank	#225,961 in Toys & Games (See Top 100 in Toys & Games) #131 in Home & Kitchen > Home Décor > Home Décor Accents > Collectible Dolls
Customer Reviews	★★★★ ▼ 6 customer reviews 5 out of 5 stars

Warranty & Support

Product Warranty: For warranty information about this product, please click here

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Cabbage Patch Kids Classic 16 inch Doll with Pink Glitter Dress: Caucasi...





Clara Marie My Ballerina
Nutcracker Collection Doll
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\$99.99 Prime





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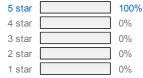
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See questions and answers

Customer Reviews

*** * * * * * * * ***

5.0 out of 5 stars



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Top Customer Reviews

★★★★★ recital gift

By patricia p. theroux on July 4, 2013

Verified Purchase

this was a recital gift for my granddaughter. she absolutely loved it. nice and soft and she loved the doll's hair

abuse



Report

Comment One person found this helpful. Was this review helpful to you? Yes

★★★★★ Made My Daughter Happy

By Elaine P Cook-Payne on June 12, 2013

Verified Purchase

Beautiful doll! My daughter loves it and has slept with this doll each night. Seems to be made very

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★★★★★ Five Stars

By rosemary nice on February 19, 2016



Ad feedback

Most Recent Customer Reviews

★★★★★ Five Stars

Our granddaughter loved it. Published 12 days ago by Linda

★★★★★ She is super cute!

The picture of this doll doesn't do her justice. She is super cute!

Published 1 month ago by F G

★★★★★ Five Stars

Perfect for a three year old.

Published 3 months ago by Kathleen Fougere

Search Customer Reviews

Q

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Verified Purchase

Absolutely adorable!!!! Well made, cute, huggable, nice size. Granddaughter loves this doll.

Comment | Was this review helpful to you? | Yes | No | Report abuse



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> Wendy Cheyette Lewison ***** 140** Paperback \$3.49 **Prime**



Melissa & Doug Alexa - 14" Ballerina Doll

★★★★ 74 \$29.97 **Prime**



Fancy Nancy: Budding Ballerina

> Jane O'Connor **★★★★** 96

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17" Ballerina Doll for Little Ballerina Girls' Dance Recital Gifts, Birthday Gifts, Ballerina Birthday

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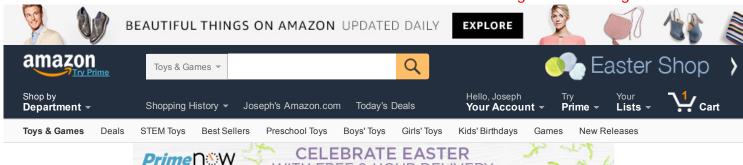
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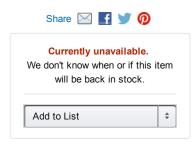
by Burton & Burton Be the first to review this item

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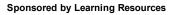
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Product Description

Plush Makinzy graduation dolls has embroidered eyes, nose, and mouth. Clothes are not removable and dolls do not sit.

Product Information

Product Dimensions	9.4 x 7.1 x 4 inches
Item Weight	1.6 ounces
Shipping Weight	1.6 ounces
ASIN	B00JNKC1C8
Manufacturer recommended age	3 months and up
Best Sellers Rank	#1,307,139 in Toys & Games (See Top 100 in Toys & Games) #27,436 in Toys & Games > Puppets & Puppet Theaters > Plush Puppets #108,746 in Toys & Games > Stuffed Animals & Toys
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Product Warranty: For warranty information about this product, please click here

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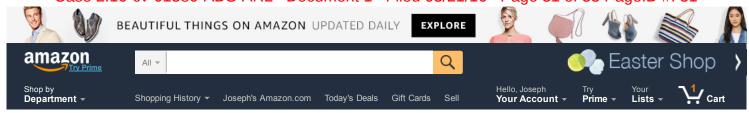
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Burton/burton 9721958 Plush 15" **Graduation Doll Brunette**

by Burton

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Product Description

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Product Information

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Shipping Weight	1 pounds (View shipping rates and policies)
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Customer Reviews	Be the first to review this item 0 out of 5 stars
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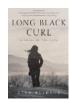
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